

**REMARKS**

By the present amendment applicant has amended claims 1 and 7 to a yoga sock comprising:

a sock made of a natural, plastic or synthetic fiber,

the sock having an open front end with webbings extending across the open front end from a top of the sock to a bottom or sole of the sock to provide openings through which the toes of a user can extend, the webbings including four spaced apart webbings extending across the open front end between the top of the sock to the bottom or sole of the sock to provide five specific toe hole openings in the front end of the sock for receiving the toes of a user, and

the sock having a generally continuous layer of a rubbery substance with a sticky soft surface extending across the bottom or sole of the sock and extending upwardly on the heel and on each side of the sock a short distance, which provides a non-slip function and which has a thickness of between 0.065 inch and 0.25 inch to enable the sock to grip a floor or mat when used by an exerciser, with or without the use of a mat, and to allow the toes to be exposed for tack or gripping functions

The Examiner's rejections of claims 1-9 under 35 U.S.C. § 103(a) for being unpatentable over the Kaspar et al. U.S. Patent No. 4,728,538 in view of the Ruth U.S. Patent No. 2,424,056 and further in view of Boersema US Application No. 2002/0000003, as this rejection may be attempted to be applied against the amended claims 1-7, is respectfully traversed.

Kaspar et al. teaches non-slip dots on a pantyhose or pair of socks. While the dot pattern could be continuous Kaspar et al. does not teach a generally continuous layer of sticky, non-slip or non-skid material on the bottom of a sock. Nor does Kaspar et al. teach a sock having an open front end with webbings extending across the open front end from a top of the sock to a bottom or sole of the sock to provide openings through which the toes of a user can extend, the webbings including four spaced apart webbings extending across the open front end between the top of the sock to the bottom or sole of the sock to provide five specific toe hole openings in the front end of the sock for receiving the toes of a user,

Further Kaspar et al. main teaching is a method and an apparatus for applying the dots of non slip material. Kaspar et al. does not teach socks with a "generally continuous layer of a rubbery substance with a sticky soft surface extending across the bottom or sole of the sock and extending upwardly on the heel and on each side of the sock a short distance, which provides a non-slip function and which has a thickness of between 0.065 inch and 0.25 inch to enable the sock to grip a floor or mat when used by an exerciser, with or without the use of a mat, and to allow the toes to be exposed for tack or gripping functions" as defined now even more clearly in amended claims 1 and 7.

While Rose teaches hose with open toes to "promote freer circulation of the blood and to improve the condition of the skin (of the toes)", Rose does not teach or suggest an exercise sock with toe openings and webbings between the toe openings and a generally continuous sticky material or non-slip material or a non-skid material on the bottom or sole of a sock to facilitate yoga exercises, e.g., tack and grip, while wearing the socks.

Ruth's sock is not made of knit fabric for sweat absorption for the intent of keeping feet warm and absorbing sweat during exercising.

Ruth's *hosiery* is intended to be worn with shoes and keep toes from cramping. Ruth's invention of open toe was intended for hosiery or a sock that would be worn with shoes. Thus Ruth's sock needs to easily slide into a shoe. The purpose of the exposed toes was to eliminate the muscular cramping that sometimes occurs as one's toes get bent as the sock pulls on the toes when the foot goes into a boot or shoe.

Thus, if there was a rubbery substance at the bottom of the sock, the person would not be able to slide their foot into a shoe or boot and this would defeat the purpose of Ruth's invention.

Applicant's sock is intended to be worn without shoes! The exposed toes are in keeping with the barefoot culture associated with yoga, pilates and the like

exercise, not for dress wear. Ruth is directed to "nylons" or "hosiery" where applicant is directed to a thicker knit cotton/nylon blend, like a gym sock.

What makes applicant's sock unique is that it combines the open toe between webbings with a non-skid bottom to enable otherwise barefoot exercisers an hygienic environment, and provides sweat absorption, muscle warming, washable, and non-slip features, while enabling the barefoot feel and toe gripping ability needed for the type of exercises carried out by the user.

Furthermore, in applicant's sock, the layer of rubbery substance 18 extends slightly upwardly on each side of the sock and upwardly on the heel as shown in FIG's. 1, 2 and 3. This provides further support and non-slip when the socks are used in exercising without shoes. Note that Kaspar et al. does not provide latex dots on the sides of the sock or on the back of the heel of the sock.

The Boersema published application teaches a sock for infants not for adults or young adults. Further Boersema teaches a gripper member that covers at least a portion of the upper surface, the lower surface and the toe surface of an infant's sock to provide traction for a crawling infant and to reduce the risk of injury to infants crawling on a smooth floor surface.

The Examiner contends that it would be obvious matter of design choice to a person skilled in the art to have provided a rubbery substance of the type disclosed by applicant on a sock designed for use in yoga exercises. This is an unfounded assertion by the Examiner, not based on solid evidence. Applicant respectfully traverses this rejection by the Examiner and points out that only the applicant makes the choice. See *Ex parte Dere*, 118 USPQ 541, where Examiner in Chief Bailey stated:

"...the art contains no suggestion of having marked zones of perforation on opposing edges spaced according to the metric on English system respectively. The Examiner, as to this relationship, which is the very thing that yields the useful results already pointed out merely states it:

'is not seen to provide a patentable distinction, being no more than a matter of choice.'

"Why he so holds he does not say and we do not see particularly since only the disclosure of the instant case makes a 'choice' available."

See also *In re Bezombes, Peyches and Tisser*, 164 USPQ 387 (CCPA 1970), where the CCPA found that a claim limitation that the support of molten metal "is not larger than the glass sheet", was not "an obvious matter of choice" in the absence of some reason why a person skilled in the art would find it obvious to depart from the flotation support of Hitchcock.

Further, there is no motivation in the Kaspar et al. method and apparatus or in the Ruth toeless hose or in the Boersema infant sock providing traction to a crawling infant to combine their teachings to somehow come up with applicant's yoga sock as defined now even more clearly in amended claims 1 and 7. See *Ex parte Beuther*, 71 USPQ2d 1313 (Non-Biding Decision of Board of Appeals 2003), *Ex parte Metcalf*, 67 USPQ2d 1633 (Non-Biding Decision of Board of Appeals 2003) and *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999)

The above remarks also apply to the Examiner's other contentions that it would be an obvious matter of design choice to a person of ordinary skill in the art (1) to have provided the thickness of the rubbery substance and (2) to have provided the sock with non-slip compositions of Kaspar et al. with the toeless hosiery of Ruth and (3) from the teachings of the infant sock of Boersema to provide the rubbery substance extending upwardly on the heel and on each side of the sock a short distance.

Note that Kaspar et al. only teaches a method and apparatus for applying dots of latex material to a bottom of a sock and Ruth only teaches providing holes in hosiery (not athletic socks) to "promote freer circulation of the blood and to improve the condition of the skin (of the toes)" when wearing shoes and not for facilitating yoga exercises, e.g., tack and grip, while wearing the socks without shoes and Boersema only teaches a gripping member on the upper surface of an infant sock to enhance traction for a crawling infant.

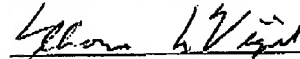
Again it would not have been an obvious design choice to provide:

- (a) the claimed thickness of the rubbery substance being between 0.065 inch and 0.25 inch;
  - (b) a sock with non-slip dots of Kaspar et al. with the toeless hosiery of Ruth;
  - or,
  - (c) the garments of Kaspar et al. and Ruth with the gripper member of Boersema on an upper surface of the sock,
- since there is no motivation in Kaspar et al. or Ruth or Boersema to make the design choice. See the decisions cited above.

In summary, applicant submits that the sock as defined in the amended claims is not disclosed or suggested by the references cited by the Examiner, that the amended claims are clear of the art and that the application otherwise is in condition for allowance. An early and favorable action to that end is requested.

Respectfully submitted,

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